

**EXHIBIT  
H**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

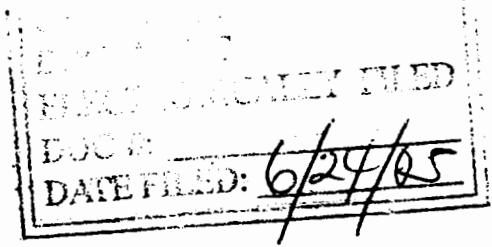
EDDIE WISE, on Behalf of Himself and Others Similarly  
Situated,

Plaintiffs,

-against-

RAYMOND W. KELLY, Commissioner of the New York  
City Police Department (NYPD); BARRY M. BUZZETTI,  
Captain and Commanding Officers, NYPD 48<sup>th</sup> Precinct;  
JOHN/JANE DOES 1-50 (NYPD Supervisory, Training,  
and Police Personnel); CITY OF NEW YORK; Police  
Officers MICHAEL CURLEY, COREY HARRIS,  
MIGUEL MUSSE, KEVIN LYNCH, JOHN BRENNAN,  
JOHN/JANE DOES 51-100 (police officers); ROBERT  
JOHNSON, District Attorney of Bronx County; and  
JOHN/JANE DOES 101-125 (Supervisory, Training, and  
Policy Personnel within the district attorney's offices);  
JUDITH KAYE, in her capacity as Chief Judge of the State  
of New York and Chief Judicial Officer of the Unified  
Court System; JONATHAN LIPPMAN, in his official  
capacity as Director of Criminal Justice and Commissioner  
of the New York State Division of Criminal Justice  
Services ("DCJS"),

Defendants.



STIPULATION AND ORDER

55 Civ 5442 (SAS)

JUN 23 2005

IT IS HEREBY STIPULATED AND AGREED, upon the district court's full and complete review of the terms of the Stipulation, by and between the defendants Raymond W. Kelly, Commissioner of the New York City Police Department; City of New York; and Robert Johnson, District Attorney of Bronx County, (hereinafter "City Defendants"), and Plaintiff Eddie Wise, and without prejudice to plaintiff's right to seek further injunctive relief:

1. The City of New York, Robert Johnson, and their respective employees shall cease enforcement of New York Penal Law § 240.35(1).

2. On June 9, 2005, City Defendants sent immediate notices to all NYPD precincts and commands and to their respective employees that New York Penal Law § 240.35(1) is void and unenforceable.

3. Additionally, on June 10, 2005, a FINEST message was sent to all NYPD precincts reminding them that New York Penal Law § 240.35 (1) is unconstitutional and directing members of the service not to enforce it. A copy of the June 10, 2005 FINEST message is annexed hereto and made a part hereof as Exhibit "A."

4. To insure that all members of the service were made aware of the FINEST message, the message was read at 10 consecutive roll calls which are conducted at the time officers report for duty at the start of their assigned tour.

5. On June 9, 2005, notification was sent to the Chief of the Criminal Bureau and Deputy Chief of the Complaint Room of the Bronx District Attorney's Office.

6. Notification in the form annexed hereto as Exhibit "B" will be sent to all Assistant District Attorneys in the Office of the District Attorney of Bronx County informing them that New York Penal Law § 240.35(1) is void and unenforceable.

7. Notification in the form annexed hereto as Exhibit "C" was sent to the Offices of the District Attorneys of Queens, New York, Richmond, and King Counties informing them that New York Penal Law § 240.35(1) is void and unenforceable.

8. Robert Johnson shall seek to dismiss any and all charges and summonses pending solely under Penal Law § 240.35(1) including conditional discharges and violations thereof related to prior charges and/or convictions solely under Penal Law § 240.35(1); City Defendants shall immediately release from custody anyone held solely on the charge of violating Penal Law § 240.35(1) or, on a charge of violating the terms of a conditional discharge relating solely to § 240.35(1); and City Defendants shall immediately seek to vacate all warrants relating to charges or summonses solely for Penal Law § 240.35(1).

9. The Court shall retain jurisdiction over the Stipulation and Order for enforcement purposes and to ensure compliance with its terms.

Dated: New York, New York  
June 22, 2005

EMERY CELLI BRINCKERHOFF & ABADY  
LLP  
*Attorneys for Plaintiff*  
545 Madison Avenue  
New York, New York 10022

By: Katherine Rosenfeld  
Katherine Rosenfeld (8525)  
Matthew D. Brinckerhoff (3552)

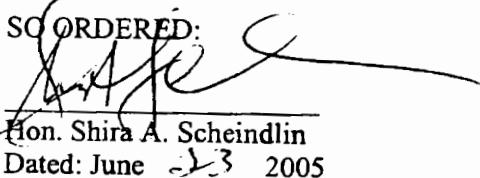
Dated: New York, New York  
June 22, 2005

BRONX DEFENDERS  
J. McGregor Smyth (9995)

Dated: New York, New York  
June 22, 2005

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
*Attorney for City Defendants*  
100 Church Street, Room 3-226  
New York, New York 10007

By: Rachel Seligman  
Rachel A. Seligman (RS 6674)  
Leticia Santiago (LS 1573)

SO ORDERED:  
  
Hon. Shira A. Scheindlin  
Dated: June 23 2005

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

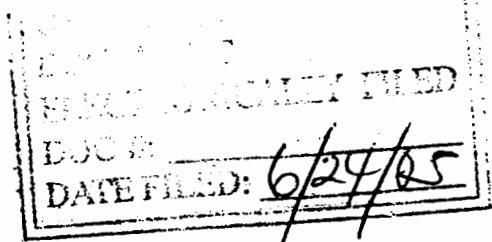
EDDIE WISE, on Behalf of Himself and Others Similarly Situated,

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-against-

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Defendants.



STIPULATION AND ORDER

05Civ5442(SAS)

JUN 23 2005

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8. Robert Johnson shall seek to dismiss any and all charges and summonses pending solely under Penal Law § 240.35(1) including conditional discharges and violations thereof related to prior charges and/or convictions solely under Penal Law § 240.35(1); City Defendants shall immediately release from custody anyone held solely on the charge of violating Penal Law § 240.35(1) or, on a charge of violating the terms of a conditional discharge relating solely to § 240.35(1); and City Defendants shall immediately seek to vacate all warrants relating to charges or summonses solely for Penal Law § 240.35(1).

9. The Court shall retain jurisdiction over the Stipulation and Order for enforcement purposes and to ensure compliance with its terms.

Dated: New York, New York  
June 22, 2005

EMERY CELLI BRINCKERHOFF & ABADY  
LLP  
*Attorneys for Plaintiff*  
545 Madison Avenue  
New York, New York 10022

By: Katherine Rosenfeld  
Katherine Rosenfeld (8525)  
Matthew D. Brinckerhoff (3552)

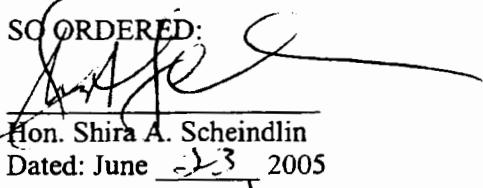
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Dated: New York, New York  
June 22, 2005

MICHAEL A. CARDODOZ  
Corporation Counsel of the  
City of New York  
*Attorney for City Defendants*  
100 Church Street, Room 3-226  
New York, New York 10007

By: Rachel Seligman  
Rachel A. Seligman (RS 6674)  
Leticia Santiago (LS 1573)

SO ORDERED:  
  
Hon. Shira A. Scheindlin  
Dated: June 23 2005

EM. CELLI BRINCKERHOFF & ABADY P  
Attorneys at Law  
545 Madison Avenue, 3<sup>rd</sup> Floor  
New York, New York 10022  
Tel: (212) 763-5000  
Fax: (212) 763-5001

DATE: June 22, 2005

FROM: Katie Rosenfeld

TO: Rachel Seligman  
Monica Connell

FACSIMILE #: (212) 788-9776  
(212) 416-6075

RE: *Eddie Wise v. Raymond W. Kelly, et al., 05 Civ. 5442 (SAS)*

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 2 / 13

MESSAGE:

The pages accompanying this facsimile transmission contain information from the law firm of Emery Cuti Brinckerhoff & Abady PC which is confidential or privileged. The information is intended to be for the use of the individual or entity named on this cover letter. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this facsimile in error please notify us by telephone immediately so that we can arrange for the retrieval of the original documents at no cost to you.

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IF THERE IS ANY PROBLEM WITH THIS TRANSMISSION,  
PLEASE CALL AS SOON AS POSSIBLE  
(212) 763-5000

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FOR INTERNAL OFFICE USE ONLY

Client Number: 1393.1 Job Number:

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY  
ANDREW G. CELLI, JR.  
MATTHEW D. BRINCKERHOFF  
JONATHAN S. ABADY  
ILANN M. MAZEL  
ERIC HECKER  
SARAH NETBURN  
MARIANN MEIER WANG  
KRISTIN COLLINS  
KATHERINE ROSENFIELD  
O. ANDREW F. WILSON

ATTORNEYS AT LAW  
545 MADISON AVENUE  
NEW YORK, NEW YORK 10022

TELEPHONE  
(212) 763-5000  
TELECOPIER  
(212) 763-5001  
E-MAIL  
[mail@ccbclaw.com](mailto:mail@ccbclaw.com)

June 22, 2005

*By hand*

Hon. Shira A. Scheindlin  
U.S. District Court for the Southern  
District of New York  
500 Pearl Street  
New York, NY 10007

Re: Eddie Wise v. Raymond W. Kelly, et al., 05 Civ. 5442 (SAS)

Dear Judge Scheindlin,

We represent plaintiff Eddie Wise in the above-captioned case. Enclosed for the Court's review is a copy of the Stipulation and Order, and supporting Exhibits A-C as referenced therein, as executed by counsel for plaintiff Eddie Wise and counsel for defendants the City of New York, Raymond W. Kelly and District Attorney Robert Johnson. If it is acceptable to the Court, it is respectfully requested that the Court "so order" the Stipulation and Order.

Very truly yours,

*Katherine Rosenfeld*  
Katherine Rosenfeld (KR 8525)

Enc.

cc:

Rachel A. Seligman, Assistant Corporation Counsel (by facsimile, w/o enclosure)  
Monica Connell, Assistant Attorney General (by facsimile, w/ enclosure)



MICHAEL A. CARDOZO  
*Corporation Counsel*

THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007

RACHEL A. SELIGMAN  
*Assistant Corporation Counsel*  
rseligma@law.nyc.gov  
(212) 788-0784  
(212) 788-9776 (fax)

June 22, 2005

**BY HAND DELIVERY**

Katie Rosenfeld, Esq.  
Emery Celli Brinckerhoff & Abady  
545 Madison Avenue  
New York, New York 10022

Re: Eddie Wise, et al., v. Raymond Kelly, et al., et al.  
05 CV 5422 (SAS)

Dear Ms. Rosenfeld:

As we discussed yesterday, enclosed please find three (3) signed copies of the Stipulation and Order for the above-matter. After you have signed the Stipulation, please forward a signed original copy to my attention.

Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rachel A. Seligman".

Rachel A. Seligman  
Assistant Corporation Counsel

Encl.

DATE: 6/22/05 TIME: 1:31  
ECBA Rec'd: *[Signature]*  
By: Mail / Hand Fax / Fedex

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Dated: New York, New York  
June 22, 2005

EMERY CELLI BRINCKERHOFF & ABADY  
LLP

*Attorneys for Plaintiff*  
545 Madison Avenue  
New York, New York 10022

By:

Katherine Rosenfeld

Katherine Rosenfeld (8525)  
Matthew D. Brinckerhoff (3552)

Dated: New York, New York  
June 22, 2005

BRONX DEFENDERS  
J. McGregor Smyth (9995)

Dated: New York, New York  
June 22, 2005

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
*Attorney for City Defendants*  
100 Church Street, Room 3-226  
New York, New York 10007

By:

Rachel A. Seligman

Rachel A. Seligman (RS 6674)  
Leticia Santiago (LS 1573)

SO ORDERED:

Hon. Shira A. Scheindlin  
Dated: June \_\_\_\_\_ 2005

# EXHIBIT A

SCRN: ADMN  
TERM: HL21

FINEST MESSAGE SWITCHING SYSTEM  
GENERAL ADMINISTRATIVE INFORMATION  
SENT 6/10/05 - 11:42:49 SER# 010295

DATE: 06/10/05  
TIME: 11:47.29  
FROM: HL21

MESSAGE:  
TO:

SUBJECT: CORRECTION TO FINEST MESSAGE SENT ON THURSDAY, 06/09/05  
SERIAL # 023612 AT 18:28 HOURS.  
SUBJECT: RE-ISSUANCE OF DIRECTIVE REGARDING FEDERAL COURT DECISION  
DEEMING PENAL LAW SECTION 240.35(1) UNCONSTITUTIONAL

ALL MEMBERS OF THE SERVICE ARE REMINDED THAT ON JULY 29TH, 1993, IN  
THE CASE OF LOPER V. BROWN., THE UNITED STATES COURT OF APPEALS FOR THE SECOND

CIRCUIT DEEMED PENAL LAW SECTION 240.35(1) UNCONSTITUTIONAL. THE COURT HELD  
THAT THE STATUTE THAT PROHIBITS LOITERING AND/OR REMAINING ABOUT A PUBLIC PLACE  
FOR THE PURPOSE OF BEGGING VIOLATES THE FREE SPEECH PROTECTION OF THE FIRST  
AMENDMENT. THE COURT ISSUED A PERMANENT INJUNCTION BARRING THE POLICE  
DEPARTMENT FROM ENFORCING PENAL LAW SECTIN 240.35(1).

ACCORDINGLY, MEMBERS OF THE SERVICE ARE REMINDED THAT THEY ARE NOT TO ENFORCE  
PENAL LAW SECTION 240.35(1).

\*\*\*\*\* TO BE READ AT TEN (10) CONSECUTIVE ROLL CALLS \*\*\*\*\*

AUTHORITY: DEPUTY COMMISSIONER OF LEGAL MATTERS

OPERATOR: FRAA FARDO 11:40 HOURS

PRIORITY: 1 ROUTING: APR1 HIGH Q30F DOM1 -----

SCRN: ADMIN  
TERM: COOC

FINEST MESSAGE SWITCHING SYSTEM  
GENERAL ADMINISTRATIVE INFORMATION  
SENT 6/16/05 - 23:09:24 2005 023844

DATE: 06/16  
TIME: 23:10  
FROM: COOC

MESSAGE

TO: ALL COMMANDS

SUBJECT: PROHIBITION AGAINST AGGRESSIVE SOLICITATION - ADMINISTRATIVE CODE 10-136

WHILE PENAL LAW 240.35(1) HAS BEEN UNCONSTITUTIONAL CERTAIN FORMS OF AGGRESSIVE SOLICITATION, PANHANDLING OR BEGGING ARE PROHIBITED UNDER ADMINISTRATIVE CODE 10-136. THIS PROVISION OF THE LAW PROHIBITS THE FOLLOWING CONDUCT:

- (A) APPROACHING OR SPEAKING TO A PERSON, OR FOLLOWING A PERSON BEFORE, DURING OR AFTER SOLICITING, ASKING OR BEGGING, IF THAT CONDUCT IS INTENDED OR IS LIKELY TO CAUSE A REASONABLE PERSON TO
  - (I) FEAR BODILY HARM TO ONESELF OR TO ANOTHER, DAMAGE TO OR LOSS OF PROPERTY OR THE COMMISSION OF ANY OFFENSE OR ANOTHER, OR
  - (II) OTHERWISE BE INTIMIDATED INTO GIVING MONEY OR OTHER THINGS OF VALUE, OR
  - (III) SUFFER UNREASONABLE INCONVENIENCE, ANNOYANCE OR ALARM.
- (B) INTENTIONALLY TOUCHING OR CAUSING PHYSICAL CONTACT WITH ANOTHER PERSON IN AN OCCUPIED VEHICLE WITHOUT THAT PERSON'S CONSENT IN THE COURSE OF SOLICITING, ASKING OR BEGGING
- (C) INTENTIONALLY BLOCKING OR INTERFERING WITH THE SAFE OR FREE PASSAGE OF A PEDESTRIAN OR VEHICLE BY ANY MEANS, INCLUDING UNREASONABLY CAUSING A PEDESTRIAN OR VEHICLE OPERATOR TO TAKE EVASIVE ACTION TO AVOID PHYSICAL CONTACT; OR
- (D) USING VIOLENT OR THREATENING GESTURES TOWARD A PERSON SOLICITED.

IN ADDITION, ADMINISTRATIVE CODE 10-136 PROHIBITS SOLICITING, ASKING OR BEGGING WITHIN TEN FEET OF ANY ENTRANCE OR EXIT OF ANY BANK OR CHECK CASHING BUSINESS DURING IT'S BUSINESS HOURS OR WITHIN TEN FEET OF ANY AUTOMATED TELLER MACHINE DURING THE TIME IT IS FOR CUSTOMER'S USE.

THIS PROVISION OF LAW ALSO PROHIBITS A PERSON FROM APPROACHING AN OPERATOR OR OTHER OCCUPANT OF A MOTOR VEHICLE WHILE SUCH VEHICLE IS LOCATED ON ANY STREET FOR THE PURPOSE OF EITHER PERFORMING OR OFFERING TO PERFORM A SERVICE IN CONNECTION WITH SUCH VEHICLE OR OTHERWISE SOLICITING THE SALE OF GOODS OR SERVICES, IF SUCH APPROACHING, PERFORMING, OFFERING OR SOLICITING IS DONE IN AGGRESSIVE MANNER.

SOLICITING, ASKING OR BEGGING UNDER THIS STATUTE INCLUDES USING THE SPOKEN, WRITTEN, OR PRINTED WORD, OR BODILY GESTURE, SIGNAL OR OTHER MEANS WITH THE PURPOSE OF OBTAINING AN IMMEDIATE DONATION OF MONEY OR OTHER THING OF VALUE OR SOLICITING THE SALE OF GOODS OR SERVICES.

THIS STATUTE IS ENFORCEABLE IN A PUBLIC PLACE AND INCLUDES ANY STREET, HIGHWAY PARKING LOT, PLAZA, TRANSPORTATION FACILITY, SCHOOL, PLACE OF AMUSEMENT, PARK PLAYGROUND, AND ANY HALLWAY, LOBBY AND OTHER PORTION OF AN APARTMENT HOUSE OR HOTEL.

ANY VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL CONSTITUTE AN UNCLASSIFIED MISDEMEANOR.

ANY QUESTIONS REGARDING THE ENFORCEABILITY OF THIS PROVISION OF LAW SHOULD BE DIRECTED TO THE LEGAL BUREAU AT 646.410.8403.

TO BE READ AT (10) CONSECUTIVE ROLL CALLS.

AUTHORITY: DEPUTY COMMISSIONER OF LEGAL MATTERS

AUTHORITY: CHIEF OF DEPARTMENT  
AUTHORIZING TERMINAL COOC  
OPS UNIT BROADCAST MESSAGE NO. 06/16-014

OPR: PD UPHARRUM 2208H00000

PRIORITY: 1 ROUTING: APRT HIGH COOC

## **EXHIBIT B**



## OFFICE OF THE DISTRICT ATTORNEY, Bronx County

ROBERT T. JOHNSON  
*District Attorney*

198 East 161st Street  
Bronx, New York 10451

(718) 598-2800

### Memorandum

TO: All Assistant District Attorneys

FROM: Robert Johnson, District Attorney

RE: New York Penal Law § 240.35(1)

This memo shall serve as a reminder that you are not to charge the above-mentioned section of New York's Penal Law which prohibits loitering and/or remaining about a public place for the purpose of begging. This section was declared unconstitutional by the United States District Court for the Second Circuit in 1993 in the matter of Loper v. Brown, 999 F.2d 699 (2d Cir. 1993) at which time an injunction was issued prohibiting its continued enforcement.

As we are all concerned that prosecutions not proceed under this void statute, I ask that you take steps to insure that no new prosecutions are initiated under the statute, that any pending prosecutions based solely on the statute are dismissed, and that steps are immediately taken to vacate any and all warrants relating to charges or summonses issued solely for violation of New York Penal Law §240.35(1).

Thank you for your immediate attention to this matter.

# EXHIBIT C



MICHAEL A. CARDODOZO  
Corporation Counsel

THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, N.Y. 10007-2601

(212) 788-0800  
Fax: (212) 227-5641  
mcardozo@law.nyc.gov

June 16, 2005

By Hand Delivery

Robert M. Morgenthau, District Attorney, New York County  
Charles J. Hynes, District Attorney, Kings County  
Richard A. Brown, District Attorney, Queens County  
Daniel M. Donovan, Jr., District Attorney, Richmond County

Re: New York Penal Law § 240.35(1)

Dear Sirs:

As a result of an action commenced in federal court entitled Eddie Wise v. Raymond Kelly, et al. 05 Civ. 4658 (SAS) (SDNY), we have learned that your office may have inadvertently prosecuted individuals under New York Penal Law § 240.35(1), which prohibits loitering and/or remaining about a public place for the purpose of begging after it was declared unconstitutional in 1993 by the United States Court of Appeals for the Second Circuit in Loper v. Brown, 999 F.2d 699 (2d Cir. 1993). At the time the statute was declared unconstitutional, an injunction was issued prohibiting its continued enforcement.

As we are all concerned that prosecutions not proceed under this void statute, we ask that you take steps to insure that no new prosecutions are initiated under the statute, that any pending prosecutions based solely on the statute are dismissed, and that steps are immediately taken to vacate any and all warrants relating to charges or summonses issued solely for violation of New York Penal Law §240.35(1). We also ask that you take immediate steps to insure that your staff is aware that the statute is unconstitutional and that enforcement of it is prohibited pursuant to a federal court order. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Cardozo".

Michael A. Cardozo

MAC/ay